IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 322 OF 1989

Jaysingpur Municipal Council,
Jaisingpur, through its
Principal Officer, Chief Officer. ... Appellant

V/s

S.S. Mirje & Co., Kolhapur. ... Respondent

Shri T.S. Ingale for the appellant.

Shri V.B. Rajure for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 11TH OCT., 2004.

P.C.:

1. Heard the learned counsel for both parties. Perused the record.

2. This appeal is preferred against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 23.8.1988 allowing the appeal and reversing the judgment and order of the Civil Judge, Jr. Divn., Jaisingpur in R.C.S. No. 76 of 1977 by which suit was decreed.

3. The plaintiff Municipal Council had filed suit

against the defendant alleging that the defendant is the registered partnership firm and plaintiff was in need of diesel engine for its Health Department for fire fighter, etc. For that purpose, on 30.11.1976 an advertisement was published in the daily newspaper. Tenders were called for and defendant and one other party filled in the tenders. On 16.11.1976, tenders were opened in General meeting in presence of the parties. The tender submitted by the third party was for Rs.31,000/- and defendant's tender was for Rs.22,676/-. Defendant's tender was accepted. As there was much difference in the said two tenders, in order to know the real situation, the agent of the defendant who was present at that time, was asked whether the amount mentioned in the tender submitted by the defendant is correct and final. At that time, the said agent of the defendant told that the said amount mentioned in the tender is final and that if the said tender is accepted, the said work will be completed by the defendant within the said amount. Thereafter, the said tender came to be accepted. The defendant thereafter did not carry out the said work as per the tender and wrote a letter dated 4.1.1977 informing that the amount of Rs.22,776/- was quoted through oversight and defendant was unable to supply at the said quotation price. In other words, the

defendant withdrew from the contract. Thereafter the plaintiff called upon the third party who had quoted the price at Rs.31,000/- as per the tender and thereafter filed the suit against the defendant for alleged breach of contract committed by the defendant and thus the plaintiff suffered a loss of Rs.8,224/- and hence the suit for recovery of the said amount.

4. The defendant filed written statement challenging the suit and contending that the suit contract was not concluded and, therefore, defendant was not liable to pay the damages and prayed for dismissal of the suit.

5. The learned concerned Trial Judge adjudicated the dispute on merits and decreed the suit of the plaintiff with cost.

6. The appeal was carried to the District Court, Kolhapur. The learned District Judge, Kolhapur, allowed the appeal and set aside the judgment and decree passed by the Trial Court and dismissed the plaintiff’s suit against the defendant. Hence the present second appeal.

7. At the time of admission of the appeal, the substantial questions of law were framed to the effect

that, grounds 8, 9 & 10 of the grounds of appeal were the said questions. However, on perusal of those clauses, those are seen to be questions of fact and cannot be called as questions of law, leave aside the substantial questions of law.

However, since the appeal is admitted and at the stage of final hearing, the only question falls for the purpose of adjudication is, in my view, whether there was any concluding contract between the parties, in the sense that if there was concluding contract, whether the question of quantifying damages or loss would be required to be considered. In that regard, perusal of the judgment of the lower Appellate Court shows that the Chief Officer of the Municipal Council entered into the witness box and categorically stated that an agreement was to be executed on stamp paper. It was also stated that the plaintiff Council had not obtained any such agreement from the defendant after accepting their tender. No such agreement is produced on record executed by the defendant. The Chief Officer further stated that there was no documentary evidence to show that they have informed the defendant to execute the agreement and further there was no documentary evidence to show that the defendant’s quotation was sanctioned.

In my view, these admissions on the part of the plaintiff's witness, who is Chief Officer of the Municipal Council are sufficient to show that there was no concluding contract between the parties. Admittedly, plaintiff is a local body and it was incumbent upon them to execute written agreement in such cases where contracts for purchases are entered into which is also an admitted position. It is further seen from the record that no such agreement was executed and there was no documentary evidence to show that the defendant's quotation was even sanctioned by the resolution of the Municipal Council. The learned counsel for the appellant submitted that there were oral contracts which can be said to be concluded on the basis of defendant's letter dated 4.1.1977. However, perusal of the said letter only shows that the defendant had backed out on the ground that due to oversight they quoted a wrong and low price of the engine and hence they were unable to supply engine at the said quoted price. Be that as it may, the fact remains that the evidence on record is sufficient to show that the contract was not concluded and, therefore, there was no cause of action for claiming damages on the ground that the defendant suffered loss to the extent of difference of price

between the quoted amount by the defendant and third party's quotation.

In the result, I am satisfied that the learned Appellate Court Judge has rightly appreciated the evidence on record and has come to the conclusion that the appeal deserves to be allowed.

I do not see any reason to interfere with the findings recorded and reasoning adopted by the lower Appellate Court Judge.

In the result, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

.....